



Department of  
**Revenue**

# Tennessee Agricultural Tax Manual

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## Chapter 1: Brief Overview of Tennessee Taxes

Agriculture has been a cornerstone of Tennessee culture throughout the history of the state. As stated in the Tennessee Encyclopedia, “[m]ore than any other form of human activity, agriculture has influenced the development of Tennessee and shaped the lives of its people.”<sup>1</sup> Agriculture, like all industries, has changed significantly over the years with advancements in science and technology. The goal of this manual is to provide Tennessee farmers, timber harvesters, and nursery operators a central resource for Tennessee state and local taxes as it applies to their respective industries. This manual provides information on sales and use tax, franchise and excise tax, business tax, and various vehicle and trailer registration provisions.

Please note that this manual is not all encompassing. Please see the Department of Revenue’s (the “Department”) in-depth manuals on franchise and excise tax, business tax, and sales and use tax for additional information.

### Sales and Use Tax

Sales and use taxes are transactional taxes applied to the sale or use of tangible personal property or specific services in Tennessee. Sales tax generally applies to the retail sales of any business, organization, or person engaged in making retail sales, including selling, leasing, or renting tangible personal property and selling certain taxable services, amusements, software, and digital products specified in the law.<sup>2</sup> Use tax applies to all items otherwise subject to sales tax except for services and amusements.<sup>3</sup>

Sales and use tax contain a state tax (the rate of which is 7%) and a local tax (the rates vary by jurisdiction, generally between 2.25% and 2.75%). These rates are combined to establish the total sales and use tax rate, generally between 9.25% and 9.75%. As further discussed below, there are several sales and use tax exemptions that apply to farmers, timber harvesters, and nursery operators.

### Franchise and Excise Tax

Franchise and excise taxes are two separate taxes that are administered together. Franchise and excise taxes only apply to taxable entities such as corporations, limited partnerships, limited liability companies, or business trusts chartered/organized in Tennessee or doing

business in the state. The franchise tax is based on the greater of the taxpayer's net worth or the book value of the real or tangible personal property owned or used in Tennessee by the taxpayer. The excise tax is based on the taxpayer's net earnings for the tax year.

Individuals and general partnerships<sup>4</sup> are not subject to franchise and excise tax. In addition, an otherwise taxable LLC or LP that has become an obligated member entity<sup>5</sup> or qualifies as a family owned non corporate entity<sup>6</sup> (FONCE) is exempt from the tax. See Chapter 2 of the Franchise and Excise Tax Manual for a full discussion on Franchise and Excise tax exemptions. It can be accessed [here](#).

## **Business Tax**

The Tennessee business tax is a privilege tax on the privilege of doing business by making sales of tangible personal property or services in Tennessee. The business tax applies to a taxpayer's gross sales, including persons selling farm, nursery, and related products. However, as discussed in more detail in Chapter 10 below, there is an exemption for the sale of livestock, nursery, stock, and other farm products sold directly from the farm and produced directly by the producer, breeder, or trainer. This tax is distinct from and applies in addition to Tennessee's franchise and excise tax.

## Chapter 2: Sales and Use Tax – Overview and General Application

As stated in Chapter 1, Tennessee sales and use tax generally applies to the sale of tangible personal property and services that are specifically listed in the Tennessee code. Tangible personal property is anything that can be “seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses.”<sup>7</sup> Tennessee law also provides several sales tax exemptions and credits that are discussed in more detail in the following chapters.

Sales tax exemptions can be “entity based,” which means purchasers that meet certain qualifications can purchase specific products tax exempt. Generally, purchasers must first apply with the Department and receive an exemption certificate before making tax-exempt purchases. Sales tax exemptions may also be “product based,” meaning the product itself must qualify for the exemption. Generally, a person may purchase a tax-exempt product without applying to the Department and receiving an exemption certificate. Both exemption types are pertinent to the agricultural industry.

Tennessee use tax compliments the sales tax and applies when an item is used, stored, or consumed in Tennessee, but is purchased from a retailer that does not collect Tennessee sales tax at the time of sale. This oftentimes applies when a product is purchased from a retailer located outside Tennessee that is not required to collect Tennessee sales tax. When the retailer does not collect sales tax, the purchaser must remit use tax to the Department based on the purchase price of the product. Please see [CUT-1 - How to Pay Consumer Use Tax](#) for more information on how to remit use tax.

Tennessee law also requires certain businesses to register with the Department and collect sales tax on their sales. For example, as further discussed in Chapter 7 below, farms that engage in agritourism are offering a taxable amusement and should be registered with the Department and collect sales tax on admission fees to the agritourism events.

Information on how to register for sales tax, when and how to file sales tax returns, and additional administrative information may be found in the Department’s Sales and Use Tax Manual.

## Chapter 3: Agricultural Exemption Certificates

### Overview

A Tennessee farmer, timber harvester, or nursery operator wishing to make tax exempt purchases must obtain the Agricultural Sales and Use Tax Certificate of Exemption (“agricultural exemption certificate”) prior to making purchases without paying sales tax.

### Application for the Agricultural Exemption Certificate

Persons seeking to be considered qualified farmers, timber harvesters, or nursery operators must apply to the Department for an agricultural exemption certificate. This application requires information the Commissioner of Revenue deems necessary to determine whether the exemption applies. Applicants must complete the application form in its entirety and mail it and all requested information to the Department at the address indicated on the front page of the application.

If the Commissioner finds the applicant meets the statutory requirements of a qualified farmer, timber harvester, or nursery operator, the Commissioner will issue a certificate granting such authority for a period of four years *or* until the applicant is no longer operating within the scope of its original application. Receipt of a certificate serves as the notice of sales tax-exempt status. Any misrepresentation made on the application by the applicant will subject the applicant to any applicable tax, penalty, and interest.

The application for agricultural exemption can be found [here](#) or on the Department’s website.

### Use of an Agricultural Exemption Certificate

Agricultural exemption certificates may only be used to purchase items that qualify for exemption. Agricultural items that may be purchased tax exempt include:

- Appliances used directly and principally for the purpose of producing agricultural products including nursery products.



- Equipment used exclusively for harvesting timber.
- Gasoline or diesel used for agricultural purposes.
- Seeds, seedlings, and plants grown from seed.
- Fertilizer.
- Pesticides.
- Livestock and poultry feeds.
- Drugs used for livestock.

### **1. Necessary Documentation for Tax-Exempt Purchases**

Farmers, nurserymen, and timber harvesters who would like to make sales tax-free purchases of qualifying items must present proof of their status as an exempt farmer, nursery operator, or timber harvester directly to the seller. One of the following documents must be submitted to a seller to prove sales tax exemption:

- A copy of the Tennessee Department of Revenue Agricultural Sales and Use Tax Certificate of Exemption.
- A copy of the wallet-sized exemption card also provided by the Department of Revenue.
- A fully completed Streamlined Sales and Use Tax Certificate of Exemption that includes the exemption number on the certificate or card issued by the Department.

Sellers must keep a copy of one of these documents on file and include the buyer's name, address, and description of tax-exempt purchases on each invoice. Farmers, nurserymen, and timber harvesters should retain their original documents in a safe place for future use during the exemption period.

## 2. Certificate Refusal

Dealers may refuse to accept the agricultural exemption certificate. There is nothing in the sales tax statutes or regulations that mandate a dealer to recognize any exemption. A seller would most likely refuse to allow a user of the agricultural exemption certificate to purchase an item that the seller knew would not qualify for the exemption. For example:

- A seller should refuse to make a sale of a diamond ring tax exempt if the purchaser presents an agricultural certificate of exemption as the basis for making the purchase tax exempt.

## Certificate Renewal

Agricultural exemption certificates must be current. Agricultural exemption certificates are valid for a four-year period. Every fourth year, the Department reissues agricultural certificates of exemption to all current exemption holders. Renewed certificates are mailed during the latter part of December before the current exemption certificates expire. New certificates have an effective date of January 1 of the following year and will expire on December 31 four years later.

Holders of agricultural exemption certificates should ensure the Department always has the correct mailing address on file. If there is a change in the location address, a new application must be submitted with the proper supporting documentation before a new certificate will be issued. If your mailing address has changed, please login to your TNTAP account and change your address.

**⚠ If you no longer meet the requirements for the agricultural exemption, you should no longer use the exemption certificate and should notify the Department at 615-253-0600.**

When the Department reissues the agricultural exemption certificates, older exemption certificates or cards cannot be used to make exempt purchases. Sellers should keep copies of the older exemption certificates to support any tax-exempt sales that were covered by the now expired exemption certificate or card.

## Chapter 4: Qualification for Agricultural Exemptions

### Overview

Before determining whether a specific piece of equipment or tool qualifies for the agricultural sales and use tax exemption, one must first determine if the purchaser meets certain statutory criteria to purchase the product tax-exempt. First, an applicant must file an [Application for the Agricultural Sales and Use Tax Exemption](#) that the Department will review to ensure the applicant meets the requirements further discussed below.

### Qualifying Farmers, Timber Harvesters, and Nursery Operators

Tenn. Code Ann. § 67-6-207 details the criteria required for a person to qualify as a farmer, timber harvester, or nursery operator for purposes of obtaining exemptions. An applicant will qualify for exemption as a farmer, timber harvester, or nursery operator if one or more of the following criteria are met. The farmer, timber harvester, or nursery operator:

- Is the owner or lessee of agricultural land from which \$1,000 or more of agricultural products were produced and sold during the year, including payments from government sources.
- Provides for-hire custom agricultural services of plowing, planting, harvesting, growing, raising, or processing of agricultural products or for the maintenance of agricultural land.
- Is the owner of land that qualifies for taxation under the provisions of the Agricultural Forest and Open Space Land Act of 1976.
- The person's federal income tax return contains one or more of the following:
  - Business activity on IRS Schedule F (Profit or Loss from Farming);
  - Farm rental activity on IRS Form 4835 (Farm Rental Income and Expenses); or
  - Farm rental activity on Schedule E (Supplemental Income and Loss).
- The person otherwise establishes to the satisfaction of the Commissioner that the

person is actively engaged in the business of raising, harvesting, or otherwise producing agricultural commodities as defined in Tenn. Code Ann. § 67-6-301(c)(2).

**⚠ Persons qualifying as manufacturers for the industrial machinery credit cannot also qualify for the agricultural exemption certificate and vice versa.**

The Department will issue an exemption certificate to persons or entities that meet one of these criteria, and such person will then be able to purchase qualifying products or equipment without paying sales or use tax.

### **1. Out-of-State Farmers may Qualify for Exemption**

Farmers, timber harvesters, and nursery operators that are located outside Tennessee can apply for and receive the Tennessee Agricultural Sales and Use Tax Certificate of Exemption in the same manner as in-state farmers, timber harvesters, or nursery operators.

Not all states issue certificates of exemption to farmers, timber harvesters, or nursery operators located in their state. However, Tennessee will not honor certificates of exemption issued to farmers, timber harvesters, or nursery operators by other states. To make tax-exempt purchases in this state, out-of-state individuals will need to apply for the Tennessee Agricultural Sales and Use Tax Certificate of Exemption.

### **2. Provision of For-Hire Agricultural Services**

Farmers, nursery operators, or timber harvesters that provide for-hire custom agricultural services of plowing, planting, harvesting, growing, raising, processing of agricultural products, or for the maintenance of agricultural land qualify as farmers, nursery operators, or timber harvesters for the purposes of the agricultural sales and use tax exemption may qualify for the exemption. For example:

- A business owns a gin. The business gins the cotton for area farmers and is either paid for the service of ginning by the farmers' cotton or exchanges the ginning service for the cotton seeds. The cotton is returned to the farmer. This business may have already qualified for and received authorization from the Department as a manufacturer. This business may instead qualify for the Agricultural Sales and Use Tax Certificate of Exemption under the criteria of providing for-hire custom

agricultural services for the processing of agricultural products.

- The cotton gin, repair or replacement parts, and repair labor for the cotton gin, and the electricity, natural gas, liquefied gas, or fuel oil used to operate the gin can be purchased tax exempt by a person in the business of providing for-hire ginning services if the person is a holder of an Agricultural Sales and Use Tax Certificate of Exemption.
- The electricity, natural gas, liquefied gas, or fuel oil used to operate the cotton gin is directly used to produce fiber for human consumption. Such energy fuel used to operate the gin must be separately metered from other energy fuels that are subject to tax at the 1.5% tax rate on energy fuel sold to and used by manufacturers.

### **3. Sawmill Operators**

Sawmill operators do not qualify as tax exempt entities, and sawmill equipment does not qualify as exempt equipment for the purpose of the agricultural exemption.

A sawmill is considered separate and apart from timber harvesting and does not fall within the farming exemption for cutting and harvesting timber. However, because a sawmill converts logs to lumber for sale, upon application to the Department, the sawmill operator may be considered for exemption from sales tax as a manufacturer. Please see the Department's Sales and Use Tax Manual for more information on the manufacturer exemption.

### **4. Horse Trainers**

Training horses is a non-taxable service in Tennessee. Trainers that are not also providing the boarding of horses owned by others do not meet any of the criteria for qualifying for the agricultural certificate of exemption. Trainers are not providing for-hire services to raise or process an agricultural product.

### **5. Horse Boarding**

Persons that board horses owned by others are providing for-hire services for raising an agricultural product. Livestock feed, livestock drugs, and instruments used to administer the

livestock drugs can be purchased tax exempt by a horse boarder that has received the agricultural certificate of exemption.

## **6. Horse Riding Trail Operators**

Providing riding trails is not one of the criteria that will qualify for the agricultural certificate of exemption. Charges for using riding trails or for providing horses to ride are considered fees or charges for an amusement, entertainment, or recreational activity that are subject to sales tax, and the seller must collect sales tax on charges for trail riding or providing horses to ride.<sup>8</sup>

## Chapter 5: Farm Equipment and Machinery Exemption

### Overview

After the farmer, timber harvester, or nursery operator receives an agricultural exemption certificate, the next step is to determine whether the product being purchased qualifies as tax-exempt under Tennessee law.

### Qualifying Tangible Personal Property

The sale at retail, lease, rental, use, consumption, distribution, repair, storage for use, or consumption in this state of the following tangible personal property is specifically exempted from the sales and use tax when sold to a qualified farmer, timber harvester, or nursery operator.<sup>9</sup>

- Any appliance used *directly and principally* for the purpose of producing agricultural products, including nursery products, for sale and use or consumption off the premises, but excluding an automobile, truck, household appliances or property that becomes real property when erected or installed.<sup>10</sup>
- Grain bins and attachments to grain bins.<sup>11</sup>
- Aircraft designed and used principally for crop dusting, such as an agracat or other similar airplanes that are designed for crop dusting purposes.<sup>12</sup>
- Equipment used exclusively for harvesting timber.<sup>13</sup>
- Trailers used to transport livestock, as defined in Tenn. Code Ann. § 44-18-101, farm products, nursery stock, or equipment, supplies, or products used in agriculture, as those terms are defined in Tenn. Code Ann. § 43-1-113, or for other agricultural purposes relating to the operation and maintenance of a farm.<sup>14</sup>

- Self-propelled fertilizer or chemical application equipment used to spread fertilizer or chemical on farms to aid in the production of food or fiber for human or animal consumption, notwithstanding the fact that the equipment may be mounted on a chassis with wheels, if the equipment is not designed for over-the-road use, but may be driven over-the-road from the source of supply to the farm, and tender beds and spreader beds, even if mounted on a truck chassis.<sup>15</sup>
- Systems for poultry environment control, feeding and watering poultry, and conveying eggs.<sup>16</sup>
- Replacement parts or labor relative to the repair of the tangible personal property described in the above bullet points.<sup>17</sup>
- Gasoline or diesel fuel used for agricultural purposes, as defined in Tenn. Code Ann. § 67-6-102; except that premixed engine fuel containing gasoline and oil, produced for use in two-cycle engines and not for use in the propulsion of an aircraft, vessel or any other vehicle, that is sold in containers of one gallon (1 gal.) or less, is not exempt from the sales and use tax.<sup>18</sup>
  - “Diesel fuel” means any petroleum distillate with at least twelve to sixteen (12-16) carbon atoms per molecule that has a boiling point of between three hundred fifty degrees Fahrenheit (350° F) and six hundred fifty degrees Fahrenheit (650° F) or any petroleum distillate that is ordinarily and customarily sold and used as a source of fuel for diesel engines.<sup>19</sup>
- Seeds, seedlings, plants grown from seed, and liners or cuttings that will produce food or fiber, including tobacco, for human or animal consumption.<sup>20</sup>
- Fertilizer to be used to aid in the growth and development of seeds, seedlings, or plants, as described in the above bullet point.<sup>21</sup>
- Pesticides that are sold for the purpose of aiding in the production of food or fiber, including tobacco, for human or animal consumption.<sup>22</sup>
  - “Pesticide” means any substance or mixture of substances or chemicals intended for defoliating or desiccating plants or for preventing, destroying,



repelling or mitigating any insects, rodents, fungi, bacteria or weeds, including, but not limited to, insecticides, fungicides, bactericides, herbicides, desiccants, defoliants, plant regulators, and nematocides.<sup>23</sup>

- Containers for farm products and plastic or canvas used in the care and raising of plants, seeds, or seedlings, as described above, and plastic or canvas used in covering feed bins, silos, and other similar storage structures.<sup>24</sup>
- Livestock and poultry feeds, drugs used for livestock and instruments used for the administration of the drugs.<sup>25</sup>
- Any natural or artificial substance used in the reproduction of livestock, including semen or embryos.<sup>26</sup>
- Adjuvants and surfactants solutions sold exclusively for the purpose of mixture with insecticides, pesticides, fungicides or herbicides or for use as a soil conditioner when the solutions are intended to aid in the growth and development of food or fiber, including tobacco, for human or animal consumption.<sup>27</sup>
- Agri-sawdust.<sup>28</sup>
- Water, electricity, natural gas, and liquefied gas, including, but not limited to, propane and butane, used directly in the production of food or fiber for human or animal consumption or to aid in the growing of a horticultural product for sale.<sup>29</sup>
- Coal, wood, wood products or wood byproducts, or fuel oil, which is used as energy fuel in the production of food or fiber for human or animal consumption or in production of nursery and greenhouse crops.<sup>30</sup>

While not an all-inclusive list, items that **do not** qualify for the agricultural exemption include, but are not limited to:

- Clothing items.
- Automobiles and trucks as well as repair parts and labor for the automobiles and trucks.

- Materials that become real property when installed, including gravel, concrete, and building materials (except temporary fencing such as corral panels and gates).
- Straw purchased from a supplier other than the agricultural producer.
- Trucks, flat-bed trailers, and semi-trailers that are used to transport farm products over the road to market, to transport machinery over the road between farms, or to pick up and carry supplies over the road to the farm.

Lawn mowers designed for residential use that are used 50% or more of the time for non-agricultural purposes such as mowing lawns and landscaped areas.

### 1. Appliances Used to Produce Agricultural Products

Appliances used directly and principally for producing agricultural and nursery products for sale and consumption off the premises qualify for the agricultural sales tax exemption. Automobiles, trucks, household appliances, or property that becomes real property when erected or installed **do not** qualify for the exemption.

Agricultural equipment must be used *more than 50% of the time* in the production of agricultural and nursery products to be exempt. State law does not require that agricultural equipment and appliances be used exclusively in the production of agricultural and nursery products. It does, however, require that they be used primarily (more than 50% of the time) for this purpose. Thus, if the equipment or appliance has multiple uses, and some are non-agricultural uses, the equipment or appliance must be directly used more than 50% of the time in the production of agricultural and nursery products to qualify for the exemption.

**⚠ Purchases of appliances used to produce agricultural products may be subject to audit. Taxpayers should maintain records documenting these purchases.**

#### *Cotton Gins*

A qualified farmer with an agricultural certificate of exemption may purchase a gin to gin the cotton they have grown tax exempt, because the cotton gin is machinery and equipment used directly and principally to produce an agricultural product.

### *Side-by-Side Class I Vehicles Used for Agriculture*

Side-by-side Class I vehicles are exempt from sales tax if they are used principally for the purpose of producing agricultural products. The vehicle must be purchased with an agricultural exemption certificate.<sup>31</sup> Side-by-side Class I vehicles are required by law to be registered for use on specified county roads.

Registering a side-by-side Class I vehicle will not invalidate an agricultural exemption certificate, so long as the vehicle is used principally (more than 50 percent of the time) for the purpose of producing agricultural products. Upon registration, the county clerk should ask to see the registrant's valid agriculture exemption certificate or fully completed Streamlined Sales Tax Certificate of Exemption.

### *Tractors and Related Implements*

Tractors generally qualify as exempt from sales tax if used principally for producing agricultural products when purchased by qualified farmers.

### *Single Article Application*

A single article is defined as one item of tangible personal property that is considered by common understanding to be a separate unit, exclusive of any accessories or extra parts, and that is capable of being sold as an independent unit or a common unit of measure.<sup>32</sup> The single article laws apply to each commonly understood single item of tangible personal property.

A tractor and related farm implement (e.g., plow, rake, mower, or bucket, etc.) are commonly understood to each be a separate unit that is priced and sold as an independent item. State and local tax would be calculated separately for the tractor and for each attachment. The single article local tax limitation and the additional state single article tax are not calculated on a total invoice amount for multiple articles of tangible personal property. Note that the single article law treats parts and accessories installed on a motor vehicle as part of the motor vehicle. However, this does not apply to tractors.

### Tractor Paint

Paint, primers, and charges for labor to apply these items to qualified farm machinery and equipment, including tractors, can be purchased tax exempt by a qualified farmer, timber harvester, or nursery operator.

### *Unmanned Aircraft Systems*

The Department considers unmanned aircraft systems (“UAS”) used in sowing, planting, growing, monitoring, managing, or harvesting farm products and nursery stock to be an appliance that qualifies for the agricultural exemption.<sup>33</sup> UAS includes an unmanned aircraft as well as the support equipment elements required to operate an unmanned aircraft for its intended purpose. Examples of support equipment elements are:

- Data and photographic recorder links such as payload sensors and cameras.
- Communications links such as radio and video systems.
- Control stations (e.g., remote control radios, joysticks, and ground control stations).
- Telemetry and navigation equipment such as transceivers and antennas.

### *All-Terrain Vehicles*

Farmers, nursery operators, and timber harvesters who have an agricultural exemption certificate may purchase ATVs tax exempt by presenting the exemption certificate to the dealer.<sup>34</sup> This exemption is available only when the name on the billing document and the title and registration is identical to the name on the Agricultural Sales and Use Tax Certificate of Exemption.

If a farmer or nursery operator purchases an ATV tax-exempt, the Department may ask them to submit additional information to verify that the appliance is used more than 50% of the time for exempt purposes. A farmer or nursery operator is responsible for tax, penalty, and interest on purchases that do not qualify for the exemption.

Repair parts and labor relating to ATVs that qualify as farm equipment are exempt from sales and use tax. The purchaser must present their agricultural exemption certificate to purchase the repair parts and labor for the qualified ATV exempt from tax.

### *Lawn Mowers*

Sales of mowing equipment and appliances *may* qualify for the agriculture exemption if certain criteria are met.<sup>35</sup> Mowers that are used in harvesting or used to aid in the production of agricultural and nursery products are considered exempt as equipment used directly in the production of agricultural and nursery products. Mowing aids in the production of agricultural and nursery products when it controls harmful or toxic plants or reduces insect and rodent infestations.

While not an all-inclusive list, the following are direct uses of mowing equipment and appliances that aid in the production of agricultural and nursery products:

- Mowing areas around barns, coops, and pens where livestock or poultry are kept.
- Mowing around barns, grain bins, and other storage facilities where farm or nursery products and livestock or poultry feed are stored.
- Mowing around and between trees, shrubbery and other horticultural products by a tree farmer or nursery operator.
- Mowing orchards and vineyards.
- Mowing pastures including fence line areas where livestock graze.

Mowing lawns is not part of an agricultural production process and does not qualify for the exemption. Mowers designed for residential use on lawns and landscaped areas generally do not qualify for the agricultural exemption because they are typically used for non-agricultural purposes.

If a farmer or nursery operator purchases a residential lawn mower tax-exempt, the Department may ask for additional information to verify that the mower is used more than

50% of the time for exempt purposes. A farmer or nursery operator is responsible for tax, penalty, and interest on purchases that do not qualify for the exemption.

### *Corral Panels and Gates*

Portable corral panels and gates qualify as appliances used directly and principally to produce an agricultural product and can be purchased exempt from sales and use tax by qualified farmers or nurserymen.

### *Class I and Class II Vehicle Registration*

A Class I off-highway vehicle is a motorized vehicle with not less than four non-highway tires, no more than six non-highway tires, whose top speed is greater than 35 mph, that is limited in total dry weight up to 3,500 pounds, that is 80 inches or less in width (measured from the outside of the tire rim to the outside of the tire rim), and that has a non-straddle seating capable of holding at least two but no more than four passengers and a steering wheel. Class I vehicles include mini-trucks.

A Class II off-highway vehicle is any off-highway vehicle that is designed to be primarily used for recreational purposes, that has a non-straddle seating capable of holding at least two but no more than four passengers and a steering wheel, and that is commonly referred to as a sand buggy, dune buggy, rock crawler, or sand rail. Class II off-highway vehicle does not include a snowmobile or other vehicle designed to travel exclusively over snow or ice.

If a Class I or Class II vehicle (except a mini-truck) is used principally for the purpose of producing agricultural products and was purchased using an agricultural exemption certificate, the subsequent registration of the vehicle does not invalidate the agricultural exemption. Accordingly, if such a vehicle is still being used principally for the purpose of producing agricultural products, county clerks should not collect sales tax or use tax upon the registration of that vehicle.

### *Mini-Trucks*

Purchases of mini-trucks **are not** exempt from sales tax, even with an agriculture exemption certificate. The sales tax law specifically excludes automobiles and trucks from the sales and use tax agricultural exemptions.<sup>36</sup>

## 2. Grain Bins and Attachments to Grain Bins

Grain bins qualify as exempt agricultural equipment when purchased by qualified farmers.<sup>37</sup> Grain bins are structures with augers, fans, and related equipment designed to dry grain to a desired state for market.

Conversely, silos and materials used to build silos are **subject** to sales tax. Silos are structures designed to contain silage and cause a heated fermentation process to convert the harvested silage to a desired state to feed cattle, usually during the winter. Silos are structures that become realty upon installation. Silos are not listed as exempt under the farming exemption.

## 3. Equipment used Exclusively for Timber Harvesting

Any machinery used exclusively (100% of the time) in the harvesting of timber is considered qualified agricultural equipment and would be exempt from sales and use tax when purchased by a qualified timber harvester. Any subsequent repair labor and repair or replacement parts for such qualifying equipment (e.g., chains, cables, fasteners, nuts, bolts, and shear pins), when sold to a qualified timber harvester that has been issued an agricultural exemption certificate, are also exempt from sales and use tax.

Examples include:

- Chainsaws.
- Log skidders.
- Bulldozers used in a qualified manner.
- Equipment used to load the logs onto trucks and trailers (e.g., claw lifts and installation of such lifts).

In addition, the agricultural exemption for trailers includes trailers used to transport harvested timber over the road to the sawmill or market (e.g., semi-trailer).

Note that a chainsaw that is used to cut firewood, or for other unqualified uses, by a farmer does not qualify as exempt machinery used directly and principally to produce agricultural products. In addition, trucks are specifically excluded from the agricultural exemption.

#### **4. Trailers**

The agricultural tax exemption for trailers includes trailers used to transport:

- Farm and nursery products over the road to market (e.g., grain trailers used to transport grain over the road to market).
- Harvested timber over the road to the sawmill or market (e.g., semi-trailers used to transport the timber to the sawmill or market).
- Equipment and supplies over the road between farms or nurseries (e.g., utility, equipment, and flat-bed trailers used to transport equipment, water, fuel, and supplies between farms or nurseries).
- For other agricultural uses related to the operation or maintenance of the farm or nursery (e.g., water or fuel trailers).<sup>38</sup>

Only those holding an agricultural certificate of exemption may purchase a trailer exempt from sales tax. Dealers have the primary responsibility for checking to ensure the proper certificate is presented before selling the trailer exempt from tax. If a person purchases a trailer from another person who is not a dealer and later comes to the county clerk's office to register the trailer, the owner must present the agricultural certificate of exemption to be exempt from sales tax.

#### **5. Replacement Parts and Labor**

Repair and replacement parts and labor to repair qualified farm machinery, equipment, or appliances are exempt from sales tax when billed to and paid by a person holding an agricultural exemption certificate.

Batteries and replacement filters (e.g., oil filters, fuel filters, and air filters) that are purchased to replace like articles on farm equipment are considered replacement parts and,



when sold to a qualified farmer, timber harvester, or nursery operator for use on qualifying farm equipment, can be purchased exempt from sales tax.

### *Maintenance Tools and Equipment*

Items such as wrenches, sockets, jacks, air compressors, grease guns, welders, and similar items used to repair farm machinery and equipment **are not** exempt from sales and use tax. The exemption extends only to qualified farm machinery and equipment and repair parts and repair labor for such equipment.<sup>39</sup> The exemption does not extend to tools or equipment used to repair or maintain the machinery or to the energy fuel used for the repair tools.

There is, however, an exception for welding rods and wire for wire feed (MIG) welders that are used to repair farm machinery and equipment. The welding rods and wire for wire feed (MIG) welders *do* qualify for the sales tax exemption because they become part of the repaired equipment.

### *Adaptive Equipment Replacement Parts*

Generally, the addition of adaptive equipment, such as radios or additional lights, that is installed on qualified farm machinery or equipment where a similar part did not previously exist, is taxable. However, if the adaptive equipment replaces existing equipment on qualified farm machinery or equipment, it is exempt from tax when purchased by a qualified person.

### *Replacement Wheels and Tires*

Trucks and automobiles are specifically listed in the sales and use tax law as items that do not qualify for the farm equipment and machinery exemption.<sup>40</sup> Because trucks and automobiles are subject to sales tax, any tires, replacement parts, or labor performed on the truck are also subject to sales tax.

Replacement wheels and tires for tractors, combines, livestock trailers, and other qualifying farm equipment and machinery are considered replacement parts and, when sold to a qualified farmer, timber harvester, or nursery operator for use on qualifying farm equipment and machinery, can be purchased exempt from sales tax.

If a tire is purchased as a qualified repair or replacement part for qualifying farm equipment, the tire disposal fee that is imposed on such purchase, regardless of whether such fee is separately itemized on the invoice, is also exempt from sales tax when purchased by a holder of an agricultural certificate of exemption.

## **6. Gasoline and Diesel Fuel**

### *Diesel Dealer Responsibilities*

Dyed diesel fuel is subject to sales and use tax unless the purchaser has an exemption. Farmers, nurserymen, and timber harvesters may purchase, exempt from sales tax, dyed diesel fuel for off-road agricultural use in farm machinery and timber harvesting equipment. The farmer must present an agricultural sales and use tax exemption certificate issued by the Department to make the purchase tax exempt.

The dealer may maintain a copy of the exemption certificate on file instead of requiring the farmer to present an exemption certificate for each purchase. The dealer is still required to prepare and retain a sales invoice to document each transaction. Dealers who do not maintain sales invoices may be held liable for sales tax due on the undocumented sales of dyed diesel fuel.

### *Dyed Diesel used for Timber Harvesting*

Dyed diesel purchased by timber harvesters holding an agricultural exemption certificate can be purchased exempt from sales tax. To be exempt, dyed diesel fuel must be used for "agricultural purposes," which includes logging equipment used in cutting and harvesting timber.

*Dyed diesel may not be purchased tax exempt if it is used in vehicles or equipment that are operated on public highways in this state.*

## 7. Wood Shavings, Hay, and Agri-Sawdust

Wood shavings and hay (usually wheat straw) used for bedding or as absorbent materials are **subject** to sales and use tax; these items do not qualify for any sales and use tax exemptions.<sup>41</sup>

Agri-sawdust is a term used primarily for Tennessee sales and use tax purposes and includes sawdust, wood shavings, chips, and slabs. Agri-sawdust used as

- Bedding for livestock.
- Mulch or covering for raising plants.
- Energy fuel for drying or smoking tobacco or other agricultural products.
- Energy fuel in the production of nursery or greenhouse products.

is exempt from sales and use tax when purchased by persons presenting their Tennessee Agricultural Sales and Use Tax Certificate of Exemption.

## 8. Seeds, Seedlings, and Plants Grown from Seeds

The agricultural exemption includes agricultural purchases such as seeds, seedlings, and plants that will produce food or fiber for human or animal consumption, by persons that have qualified for and received an Agricultural Sales and Use Tax Certificate of Exemption. Seeds, seedlings, or plants cannot be purchased tax free without an exemption certificate.<sup>42</sup>

### *Sod*

Although sod is an agricultural product, sod is not normally grown to produce food for consumption by humans or animals. However, a nursery operator or sod farm can register for a Tennessee sales and use tax account and obtain a Tennessee certificate of resale that can be used to purchase tax exempt products such or seedlings as ingredients or components of an agricultural product to be sold to others.

The nursery operator or sod farm, when completing the Tennessee sales and use tax return for the applicable tax period, will report sod sales as gross sales on Line 1 of the return and exempt these transactions by also reporting them on Schedule A, Line 6.

### **9. Plastic and Canvas Coverings**

Plastic and canvas coverings, including tarpaulins, can be purchased exempt from sales and use tax by a qualified agricultural certificate holder for the following uses:

- In the care and raising of plants, seeds, or seedlings.
- As a cover for agricultural and horticultural products, including hay.
- To cover a silo or grain bin or other similar structures.

### **10. Water, Electricity, Natural Gas, Liquefied Gas, and Energy Fuel**

Electricity, natural gas, liquefied gas, coal, and wood used directly in the production of food and fiber for human or animal consumption or to aid in the growing of horticultural products for sale, are exempt from sales tax when purchased by farmers, timber harvesters, and nursery operators upon presentation of their agricultural exemption certificate to the supplier. For example:

- Electricity, natural gas, or other energy fuels that are used to heat barns or pens or to provide electricity for lights or other electrical needs on the farm or nursery, are exempt from sales and use tax to the extent they are used directly in the production of food or fiber for human or animal consumption or to aid in the growing of horticultural products for sale by a qualified farmer or nursery operator.

Utilities or energy fuel purchased for other uses do not qualify for the exemption.

#### *Agricultural Water*

Water purchased by a qualified farmer or nursery operator that is used directly in the growing and producing of food or fiber for human or animal consumption, as well as nursery and greenhouse crops for sale, is exempt from sales and use tax.<sup>43</sup> To qualify for the

tax exemption, water for agricultural use as described above must be separately metered from water for non-agricultural uses. This exemption does not apply to sales of utility water for residential or other business uses (e.g., industrial).

Examples of tax exempt uses of agricultural water include, but are not limited to:

- Irrigation of fruits, vegetables, and other agricultural crops.
- Irrigation of nursery flowers and plants.
- Watering livestock (i.e., animals commonly grown for food or fiber, horses, mules, and other draft animals).
- Application of fertilizers and pesticides.
- Washing agricultural produce.

### *Machinery and Equipment Lubricants and Oils*

Lubricants and other liquids used in qualifying machinery and equipment, such as oil, antifreeze, transmission and hydraulic fluids, solutions for rear tires, and greases, **are not** exempt from sales and use tax even when sold to a qualified farmer, timber harvester, or nursery operator.

## **11. Materials that Become Realty Upon Installation**

### *Fencing Materials*

Fencing materials that become realty upon installation are **subject** to sales tax. Items that become realty upon installation are specifically excluded from the agricultural exemption.<sup>44</sup> Fencing, including electric fencing, that is portable, intended to be moved, and does not damage the real property when it is moved, does not become real property upon installation and, therefore, may be purchased tax exempt by a holder of the agricultural certificate of exemption.

### *Materials used to Build Barns*

Lumber and other building materials that are purchased for the purpose of building a barn on farm property **are not** exempt from sales tax. The building materials for the barn become realty upon installation. Items that become realty upon installation do not qualify for the agricultural exemption.

### **12. Warranty Contracts Covering Exempt Farm Equipment**

The sale of extended warranty or service/maintenance contracts is **subject** to sales tax, even if the contract covers the repair or maintenance of machinery and equipment that qualifies for the agricultural or farming exemptions. Warranty or maintenance contracts are an independent intangible right to receive a service that is taxable under Tenn. Code Ann. § 67-6-208.

## Chapter 6: Exemption from Sales and Use Tax of Agricultural Products Grown or Produced

### Overview

The gross proceeds derived from sales of livestock, nursery stock, poultry, and other farm or nursery products, made in any calendar year directly by a farmer or nursery operator, are exempt from the sales or use tax if 50% or more of the products sold are grown or produced in the calendar year by the farmer or nursery operator making the sale.<sup>45</sup>

If less than 50% of the products being sold in any calendar year are grown or produced by the farmer or nursery operator, then only the gross proceeds of sales of the products actually grown or produced by such farmer or nursery operator are exempt from the sales or use tax.

### Livestock, Nursery Stock, Poultry, and Other Related Products

Generally, sales of livestock, nursery stock, poultry, or other farm or nursery products to consumers are subject to sales or use tax. However, when a qualified farmer or nurseryman sells livestock, nursery stock, poultry, or other farm or nursery products the farmer produced directly to the consumer, these sales are exempt from sales and use tax. When a farmer sells farm products that the farmer produced to a reseller, such as a grocery store, the resale by the grocery store of the farm products is subject to the sales or use tax.

When livestock and livestock products, poultry and poultry products, or farm, nursery, and agricultural products are produced by a farmer or nursery operator and used by the nursery operator or members of the nursery operator's family, the sales or use tax law states specifically that Tennessee use tax does not apply.

For example:

- During a given calendar year, Farmer A sells \$2,000 worth of pumpkins, \$1,200 of which was from pumpkins Farmer A produced and \$800 of which was from pumpkins Farmer A purchased for resale from Farmer B. For the purpose of this example,

assume that the relative value of the pumpkins sold correlates directly to the relative amount of pumpkins sold (e.g., one pumpkin equals one dollar). In this case, all \$2,000 of proceeds from these pumpkin sales are exempt from sales and use tax because 60% ( $\$1,200/\$2,000$ ) of the pumpkins sold during the calendar year were produced by Farmer A.

- Alternatively, assume \$800 worth of the \$2,000 of pumpkins sold during the calendar year were produced by Farmer A, and the remaining \$1,200 of pumpkins sold were purchased for resale by Farmer A from Farmer B. In this case, because only 40% ( $\$800/\$2,000$ ) of the pumpkins sold were produced by Farmer A, Farmer A would be required to collect sales tax on the \$1,200 of proceeds attributable to the pumpkins purchased for resale from Farmer B. The \$800 of proceeds from the pumpkins Farmer A produced remain exempt from sales and use tax. Farmer A must keep records to properly distinguish taxable sales from non-taxable sales.

### **1. Agricultural Products Given Away**

When farmers give away agricultural products for free, as long as they grew or produced 50% or more of the agricultural products given away, or as long as they purchased the agricultural products directly from another farmer who grew or produced the agricultural products, no use tax is due on the agricultural products given away for free.

However, if a farmer purchases agricultural products from someone other than the grower or producer of the agricultural products and no sales tax is collected at the time of the purchase, the farmer will owe use tax on the purchase price of the agricultural products it gives away for free.

### **2. Livestock as an Agricultural Product**

Raising livestock qualifies as producing an agricultural product. Agricultural products grown or produced by a farmer and sold directly by the farmer who is the grower or producer of the agricultural product are not subject to sales tax. If agricultural products are sold in conjunction with agritourism activities, any charges for admission to the agritourism activity are subject to sales tax as a taxable amusement, entertainment, or recreational activity.

For example:



- A farmer sells hams, bacon, and sausage that are derived from livestock raised by the farmer, and these products will be exempt from sales tax as long as ingredients that are not produced by the farmer are not added to the livestock products, other than water, salt, sugar, pectin, or preservatives. If the farmer adds any ingredients that it did not produce to its livestock products, other than those listed, the farmer will have to collect sales tax on the sale of their products that contain the non-raised ingredients. The farmer may purchase the salt, sugar cure, or other preservatives that become part of the hams, bacon, and sausage using a resale certificate of exemption.

### *Sales of Puppies, Kittens, and Other Non-Livestock Animals*

Although state law exempts the sale of farm animals (e.g., cattle, horses, hogs, sheep, goats, chickens, turkeys, etc.) from the sales and use tax when sold by the farmer that produced them, there is no corresponding exemption for the sale of pets, including dogs, cats, hamsters, guinea pigs, parakeets, parrots, or any animal or fowl that is considered to be a pet. These animals are considered tangible personal property, and sales of these animals are generally subject to the sales tax.

### **3. Hemp as an Agricultural Product**

The sale of hemp or products that are derived from hemp, such as extracted oil with no additives, are not subject to sales tax in Tennessee when they are sold by the hemp grower or farmer, as they are considered agricultural products.

However, sales of creams, oils containing additives, and other products made from hemp that you have grown are subject to sales tax and business tax whenever other ingredients are added to these products. Such products are not exempt for medical purposes from either sales tax or business tax.

### **Agricultural Commodities**

For sales or use tax purposes, “agricultural commodity” means horticultural, poultry, farm products, livestock, livestock products, and harvested trees. When agricultural commodities are sold by anyone, other than the producer, to a third party for use or for sale in the process of preparing, finishing, or manufacturing the agricultural commodities for retail sale to the ultimate consumer, such sales are exempt from the sales or use tax, including payment of the

tax applicable to the sale, storage, use, transfer, or any other utilization or handling of the products.

In such instances, sales tax will be collected on the sale of the agricultural commodities when they are actually sold as a marketable or finished product to the ultimate consumer. The tax will be collected only once.

### **Online Nonprofit Farmers' Market**

Sales made directly from a farmer or nursery operator to a consumer through an online nonprofit farmers' market are exempt from sales or use tax, provided that:

- An amount equal to the consumer's full purchase price is transmitted by the consumer or the online farmers' market to the farmer; and
- The cooperative or other organizing body of the online farmers' market charges no fee or other charge for facilitating the sales other than "virtual booth" rental fees assessed to participating farmers to cover actual costs incurred in operating the online farmers' market.<sup>46</sup>

## Chapter 7: Agritourism

### Overview

Agritourism is farm-based tourism where visitors can see and experience life in agricultural areas and participate in various farm activities.<sup>47</sup> Agritourism activities may include:

- Assisting with farming tasks.
- Picking fruits and vegetables.
- Visiting mazes cut in crop fields or “Halloween” mazes (including Halloween-oriented activities and characters in costume).
- Horse riding.
- Honey tasting.
- Educational sessions.
- Participation in hayrides (which may include picnics, campfires or bonfires, and entertainment such as music and dancing).
- Shopping in gift shops and farm stands for local and regional produce or hand-crafted gifts.
- Purchasing food and beverages.

If the activities are only educational in nature (i.e., where guests are merely shown how a farm operates, are given demonstrations, etc.) without any amusement, recreation, or entertainment activities, such as horse riding or hay rides, charges for these activities would not be subject to the sales or use tax.

## **Admissions to Agritourism Activities**

If participants in agritourism events are charged admission to engage in such agritourism activities, these charges are generally subject to sales tax. Tenn. Code Ann. § 67-6-212 imposes sales taxes on fees or other charges made for admission to places of amusement, sports, entertainment, exhibition, display, or other recreational events or activities.

If the person selling the agritourism adventure is not the owner or operator of the farm but has simply contracted with a farm to conduct such activities on the farm, then the total charge made by the seller for the admissions to the amusement, entertainment, or recreation event is subject to the sales or use tax.

## **Fruit and Vegetable Picking at Agritourism Events**

If participants are permitted to pick fruits and vegetables for which a charge is made, these sales would not be subject to sales or use tax if the farm making the sale produces at least 50% of the products sold. However, when involved as a part of an amusement, entertainment, or recreation activity, the charges for the fruits and vegetables must be made separately from the charge for the amusement, entertainment, or recreation event to qualify for exemption.

The farmer must collect tax on the sale of products purchased from others and sold if more than 50% of the gross proceeds are from the sale of products produced by others. Generally, hand-crafted gifts would also be subject to the sales or use tax unless made from products produced by the farmer.

If the person selling the agritourism adventure is not the owner or operator of the farm, but has simply contracted with a farm to conduct such activities on the farm, then the total charge made by the seller for sales of fruits and vegetables is subject to sales or use tax.

## **Produce Sold at Agritourism Events**

When farmers sell their farm produce to attendees of agritourism events or activities, as long as all the farm products sold are grown or produced by the farmer, or at least 50% or more of the produce sold by the farmer is grown or produced by the farmer, the sale of the farm produce is not subject to sales tax.

However, the charges for the farm produce must be separate from any charges for the agritourism events or activities, which are subject to sales tax as a taxable amusement, recreation, or entertainment activity.

### **Prepared Food Sold at Agritourism Events**

In conjunction with an agritourism event, a farmer may sell food to the attendees that they have cooked using their own farm produce. To the extent the prepared food is made entirely from the farmer's own produce or agricultural products and the charges for the prepared food are separate from any charges for the agritourism events or activities, the sale of the prepared food is exempt from sales tax.

If the prepared food contains any components or ingredients that are not produced by the farmer, other than water, sugar, salt, pectin, or preservatives, the charges for the prepared food are subject to the 7% state sales tax plus the local sales tax rate in effect in the farmer's jurisdiction. In addition, combining the charge for non-taxable prepared food with the charge for the agritourism event or activity will result in a "bundled" charge that is subject to sales tax. Also, sales of beverages at the agritourism event, such as soft drinks, beer, tea, etc., that are not produced by the farmer are subject to sales tax.

## Chapter 8: Value-Added Products and Prepared Foods

### Overview

Some farmers or growers will use agricultural products grown by the farmer to make other products known as “value-added” products.

### Value-Added Products

For “value-added” products to be eligible for sale as tax-exempt farm products, the farmer must raise the products used to make the value-added product. Farm products may be preserved and sold as tax-exempt by the farmer if the only non-raised ingredients added are preserving additives such as water, sugar, salt, and pectin. For example:

- Sales of jams or jellies made from fruit grown or produced by a farmer and sold directly by the farmer are not subject to sales tax if the farmer has added nothing more to the preserves than water, salt, sugar, pectin, or preservatives. If any non-raised ingredients, other than water, salt, sugar, pectin, or preservatives are added, the sale of the jams and jellies will be subject to sales tax.

### Prepared Foods

A food item is considered prepared food if it meets one of the following qualifications:

- It is sold in a heated state or heated by the seller;
- It contains two or more food ingredients mixed together by the seller for sale as a single item; or
- The vendor who sells it also provides eating utensils, such as plates, knives, forks, spoons, glasses, cups, napkins, or straws.

Prepared food is not considered “food and food ingredients” for sales tax purposes. Sales of prepared food are generally subject to the standard 7% state sales tax rate, plus the applicable local sales tax rate.<sup>48</sup>

Farmers and growers engaged in agritourism or similar activities may have concession stands where the farmer sells food items prepared from agricultural products grown by the farmer. If the food product sold at concession is made entirely from ingredients raised by the farmer, except for the addition of water, sugar, salt, pectin, or other preservatives, it is considered a tax-exempt farm product. However, if any ingredient, other than water, sugar, salt, pectin, or other preservatives that the farmer did not raise is added to the food product, the entire sale is taxable.

## Chapter 9: Community Gardens

The sale of products that are grown or produced in a community garden in any calendar year are exempt from sales tax when sold by a representative of the community garden.<sup>49</sup>

A “community garden” is defined in Tenn. Code Ann. § 43-24-102 as:

- A piece of real property, either on vacant public land or private land, cultivated by residents of a neighborhood or community, or members of a homeowners or condominium owners association, for purposes of providing vegetables, nuts, herbs, fruit, or flowers, whether by means of cultivating annual, biennial, or perennial plants or trees, or honey and honey byproducts, through the placement and use of beehives, for use of the residents of the neighborhood or community or members of the homeowners or condominium owners association.



## Chapter 10: Business Tax

### Overview

Generally, persons conducting business within any county and/or incorporated municipality in Tennessee should register for and remit business tax. Business tax consists of two separate taxes: the state business tax and the municipal-level business tax.

With a few exceptions, all businesses that sell goods or services must pay the state business tax. This includes businesses with a physical location in the state as well as out-of-state businesses performing certain activities in the state. Additionally, persons with a business location in a city that has enacted the business tax are required to pay the city business tax as well. For more information on business tax in general, please see the [Department's Business Tax Manual](#).

### Classifications

Each taxpayer is classified by its dominant business activity (the activity that produces its largest portion of taxable gross sales) on a per location basis. Each classification has its own tax rate that must be applied to all taxable sales at a given location. There are five different classifications for taxable activities as well as a separate category for antique malls, flea markets, and the like. A taxpayer must choose only one classification per location.

Notably, Classification 1C includes businesses selling farm, nursery, and related products including:

- Bulbs
- Feed
- Fertilizer
- Grain
- Hay

- Nursery stock
- Seeds
- Other farm, lawn and garden tools and supplies

Additionally, Classification 4 is for contractors and for the sale of certain farm products. Persons receiving compensation from selling the following farm products are included under Classification 4:

- Livestock
- Poultry
- Other farm products

Sales by persons who directly produce and sell such products directly from the farm are not included under Classification 4 and are exempt from business tax.<sup>50</sup>

For more information on classifications, see Chapter 5 of the [Department's Business Tax Manual](#).

## **Agricultural Sales**

Tennessee gross sales of livestock, horses, poultry, nursery stock, and other farm products direct from the farm are exempt from business tax, provided that these sales are made directly by the producer, breeder, or trainer.

When sales of livestock, horses, poultry, or other farm products are made by any person other than the producer, breeder, or trainer, they will be classified and taxed for business tax under Classification 4. Additionally, catfish farmers are specifically exempt from business tax.<sup>51</sup>

## Services Provided by Farmers to Other Farmers

Services provided by farmers to other farmers for planting or harvesting of agricultural products or for the:

- Preparation
- Improvement
- Maintenance

of land used in the production of agricultural products are exempt from business tax.<sup>52</sup>

## Agricultural Commodity Brokers

As mentioned above, when sales of livestock, horses, poultry, or other farm products are made by any person other than the producer, breeder, or trainer, they will be classed and taxed as Classification 4 sales.<sup>53</sup>

The business tax also includes the commissions, fees, margins, or other charges received from sales of livestock, poultry, or other farm products.<sup>54</sup>

## Agricultural Exemptions

### 1. Farmers Providing Services to Other Farmers

Farmers providing services to other farmers for planting or harvesting agriculture products, or for the preparation, improvement, or maintenance of land used in the production of agricultural products are exempt from business tax.<sup>55</sup>

### 2. Sales Directly from the Farm

Receipts of the producer from sales of livestock, poultry, and other farm products directly from the farm, including receipts from catfish farmers, are excluded from gross sales on the business tax return.<sup>56</sup>

When sales of livestock, horses, poultry, or other farm products are made by any person other than the producer, breeder, or trainer, they will be classed and taxed as Classification 4 sales.<sup>57</sup>

### **3. Lessors of Agricultural Properties**

Persons leasing agricultural, airport, forest, mining, oil, and public utility properties are excluded from business tax for the provision of leasing services.<sup>58</sup>

## Chapter 11: Franchise & Excise Tax

Franchise and excise taxes are two separate taxes that are administered together. These taxes only apply to taxable entities such as corporations, S corporations, limited partnerships, limited liability companies, cooperatives, and business trusts,<sup>59</sup> that are chartered or organized in Tennessee or doing business in the state. The franchise tax is based on the *greater* of a taxable entity's *net worth* or the *book value* of the real and tangible property owned or used in Tennessee by the taxable entity. The excise tax is based on a taxable entity's net earnings or loss for the tax year.

### 1. Registering for Franchise and Excise Tax

A taxable entity (as indicated above) will be subject to franchise and excise tax if it is doing business<sup>60</sup> in the state *and* has substantial nexus<sup>61</sup> in the state, unless the taxable entity qualifies for a tax exemption. An entity that is subject to the tax must register with the Department within 15 days of the date on which it became subject to the tax.

For more information on registering for franchise and excise tax, please see Chapter 5 of the Department's Franchise and Excise Tax Manual. It can be accessed [here](#).

### 2. Determining Excise Tax Liability

The excise tax is based on a taxable entity's net earnings or loss for the tax year. The excise tax is computed on [Form FAE170](#), Schedules J1-J4 and J.<sup>62</sup> The starting point for computing net earnings or loss for excise tax purposes begins with federal taxable income, as reported on the corresponding federal income tax return; namely, federal Forms 1120, 1120S, 1065, 1040, 990-T, or other variants of these forms.

A limited liability company that is wholly-owned by an individual will report its farming-related business activity on the individual's federal Form 1040, Schedule F (and, if applicable, Schedules C, D, and E, and Forms 4562, 4684, 4797, and 4835, etc.). The corresponding excise tax schedule for a federal Form 1040 filer is Form FAE170, Schedule J2.

Farming income that is generated by a taxable entity who files either Schedule J1 or J2 is not subject to the Tennessee excise tax to the extent such income is subject to federal self-employment taxes (calculated on federal Schedule SE). For more information regarding the

excise tax in general, as well as the excise tax self-employment deduction available to Schedule J1 and J2 filers, please see Chapter 11 of the Department's Franchise and Excise Tax Manual. It can be accessed [here](#).

### 3. Determining Franchise Tax Liability

The franchise tax is based on the *greater* of a taxable entity's *net worth* or the *book value* of the real and tangible property owned or used in Tennessee by the taxable entity. The franchise tax is computed on [Form FAE170](#), Schedules F1 (or F2, if applicable) and G. The starting point for computing the franchise tax is the taxpayer's books and records prepared under generally accepted accounting principles (GAAP). However, if the taxpayer does not maintain its books and records in accordance with GAAP, the taxpayer may use its books and records prepared in accordance with the accounting method it uses for federal tax purposes, so long as this method fairly reflects the taxpayer's net worth and the value of the real and tangible property owned or used in Tennessee by the taxpayer.

For more information on calculating the franchise tax, please see Chapters 9 and 10 of the Department's Franchise and Excise Tax Manual. It can be accessed [here](#).

### 4. Franchise and Excise Tax Exemptions

There are several ways a farm business may be exempt from the franchise and excise tax, including the following:

- Entity type is individual or general partnership;<sup>63</sup>
- Entity status is not-for-profit<sup>64</sup> or farmer cooperative;<sup>65</sup>
- Entity qualifies for the obligated member entity ("OME") exemption;<sup>66</sup>
- Entity qualifies for the "farming or the holding of a personal residence" ("FHPR") exemption;<sup>67</sup> or
- Entity qualifies for the family-owned noncorporate entity ("FONCE") exemption.<sup>68</sup>

An entity claiming exemption as an OME, FONCE, or FHPR must file an [Application for Exemption/Annual Exemption Renewal](#). The FHPR and FONCE exemptions will be discussed

next. See [Chapter 2 of the Franchise and Excise Tax Manual](#) for more information on exemptions.

### *Farming or the Holding of a Personal Residence (FHPR) Exemption*

The franchise and excise tax exemption that is most pertinent to farming businesses is the "farming or the holding of a personal residence" (FHPR) exemption. A limited liability company (LLC), limited partnership (LP), or limited liability partnership (LLP), will qualify for this exemption if the entity meets certain *ownership* and *activity* criteria.

The *ownership requirement* is met if at least 95% of the voting rights, capital interest, or profits of the entity are owned either by natural persons who are relatives of one another or by trusts for their benefit. For this purpose, "natural persons" will be considered relatives, if, by blood or adoption, they are descended from a common ancestor and their relationship with each other is that of a first cousin or closer than that of a first cousin, or if they are spouses of one another.<sup>69</sup>

There are two ways the *activity requirement* may be met. First, it is met if at least 66.67% of the activity of the LLC, LP, or LLP is farming.

- "Farming" means the growing of crops, nursery products, timber or fibers, such as cotton, for human or animal use or consumption; the keeping of horses, cattle, sheep, goats, chickens or other animals for human or animal use or consumption; the keeping of animals that produce products, such as milk, eggs, wool or hides for human or animal use or consumption;
- "Farming" also includes the leasing of the land to be used for the purposes as described above.<sup>70</sup>
- The entity's activity is considered farming only if at least 66.67% of its income, including capital gains from the sale of land and other assets used in farming, is derived from farming and at least 66.67% of its assets, valued at original cost to the entity, are used by the owner or by the owner's lessee or sharecropper for farming. In the event that an asset's original cost to the entity cannot be determined, or there is no original cost to the entity, the property shall be valued at its fair market value at the time of acquisition by the entity.<sup>71</sup>

In addition, the *activity requirement* is met if at least 66.67% of the activity of the LLC, LP, or LLP is the holding of one or more personal residences where one or more of the members or partners reside for at least five years.

- "Personal residence" includes acreage contiguous to the dwelling.
- To qualify as a personal residence, the dwelling unit must be occupied for personal use by partners or members of the entity for more days than it is rented to others who are not partners or members of the entity.<sup>72</sup>

Any entity that qualifies for the FHPR exemption because of farming activity, or because the property has been used as a personal residence for at least five years, will remain exempt for one year from the end of the calendar year in which it ceases to qualify for the exemption, but only with regard to property and transactions related to property that it held at the time that it last qualified for the exemption. Net worth resulting from sales and other transactions involving real, tangible, or intangible property acquired by the entity after it ceased to qualify for the exemption (after-acquired property) will be subject to the franchise tax. After-acquired property will be included in the entity's franchise tax minimum measure. If the entity computes an apportionment formula, any after-acquired property and any compensation or gross receipts related to such property will be included in the appropriate factors of such formula.

#### *Family-Owned Noncorporate Entity (FONCE) Exemption*

A noncorporate entity (LLC, LP, or LLP) that is at least 95% family-owned and which derives at least 66.67% or more of its gross receipts from passive investment income, or the combination of the production of passive investment income and *farming* (as defined above for the FHPR exemption)<sup>73</sup> is exempt from franchise and excise tax.

- "Family-owned" means, with respect to an individual:
  - An ancestor of such individual.
  - The spouse or former spouse of such individual.



- A lineal descendent of such individual, of such individual's spouse or former spouse, or of a parent of such individual.
- The spouse or former spouse of any lineal descendent described in the bullet point immediately above.
- The estate or trust of a deceased individual who, while living, was described in any of the bullet points above. Or
- A legally adopted child of an individual is treated as the child of such individual by blood.
- "Passive investment income" means gross receipts derived from royalties, *rents from residential property or farm property*, dividends, interest, annuities, and sales or exchanges of stock or securities to the extent of any gains therefrom.<sup>74</sup>
- "Farm property" includes all real property that is used, or held for use, in *agriculture*, as defined below, including, but not limited to, growing crops, pastures, orchards, nurseries, plants, trees, timber, raising livestock or poultry, or the production of raw dairy products. It does not include acreage used for recreational purposes by clubs, including golf course playing hole improvements.
- "Agriculture" means:
  - The land, buildings and machinery used in the commercial production of farm products and nursery stock.
  - The activity carried on in connection with the commercial production of farm products and nursery stock.
  - Recreational and educational activities on land used for the commercial production of farm products and nursery stock. And
  - Entertainment activities conducted in conjunction with, but secondary to, commercial production of farm products and nursery stock, when such activities occur on land used for the commercial production of farm

products and nursery stock.

- As used in the above definition of agriculture, the term “farm products” includes:
  - Forage and sod crops.
  - Grains and feed crops.
  - Dairy and dairy products.
  - Poultry and poultry products.
  - Livestock, including breeding and grazing.
  - Fruits.
  - Vegetables.
  - Flowers.
  - Seeds.
  - Grasses.
  - Forestry products.
  - Fish and other aquatic animals used for food.
  - Bees.
  - Equine. And
  - All other plants and animals that produce food, feed, fiber, or fur.
  
- As used in the above definition of agriculture, the term “nursery stock” means all trees, shrubs, or other plants, or parts of such trees, shrubs or other plants, grown

or kept for, or capable of, propagation, distribution or sale on a commercial basis.<sup>75</sup>

As explained above, a farm business can meet the activity requirement for the FONCE exemption if at least 66.67% or more of its gross receipts are from passive investment income or are from a combination of the production of passive investment income and farming. "Passive investment income" includes rents from farm property that is real property used or held for use in agriculture.

## Chapter 12: Vehicle Title and Registration

### Joint License Plates

#### 1. Requirement for Joint Plates

“Joint” plates or “J” plates are used for farm vehicles and vary depending on the weight of the vehicle. Joint plates are required for the following:

- Motor vehicles moving farm products for the grower from the point of production to first market.
- Motor vehicles operated as farm trucks.
- Logging and lumbering trucks.
- Motor vehicles used for the owner’s private conveyance, transporting only tangible personal property belonging to the owner or a guest occupant.
- Truck tractors used to pull lowboy-type trailers on which agricultural machinery is transported. And
- Trucks on which lime or fertilizer spreaders are mounted.

For certain freight motor vehicles, the applicant may need to submit proof that a federal highway use tax form (federal Form 2290) has been filed, or an over-dimensional or over-sized permit may need to be obtained from the Department of Transportation.

Joint plates can only be obtained through the ninety-five County Clerk offices. County Clerk office locations can be found [here](#).

#### 2. Farm Trucks

Vehicles that qualify for joint plates as “farm trucks” are those used in connection with agricultural pursuits that are usual and normal to the owner’s farming operations, such as:

- The transportation of products of the soil, livestock, poultry, seed, or any materials to be used by the owner in production, cultivation, growing, or harvesting of agricultural commodities; or
- For use incidental to farming as the transportation of farm products or materials that may be used for its improvement or promote its operation.

Farm trucks do not include vehicles used either part time or incidentally in the conduct of any commercial enterprise, or for the transportation of farm products after such commodities have entered the “channels of commerce,” (e.g., “house to house” delivery of milk).<sup>76</sup>

## Farm Vehicle Registration

### 1. Tractor Registration

Tractors that are used for agricultural purposes are exempt from registration as “implements of husbandry.” Tenn. Code Ann. § 55-1-108 defines “implements of husbandry” as vehicles that are “designed for agricultural purposes and exclusively used by the owner thereof in the conduct of the owner’s agricultural operations.”

### 2. Trailer Registration

Trailers that are used:

- By farmers
- For agricultural purposes or
- For hauling livestock between the farm and market,

depending on the length and width, are generally exempt from registration. This includes horse trailers and gooseneck trailers.



Agricultural trailers may have Trailer E or Semi-Trailer plates. For more information on title and registration, contact the Department of Revenue's Vehicle Services Division at (888) 871-3171.

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<sup>1</sup> <https://tennesseencyclopedia.net/entries/agriculture/> (Last visited April 27, 2021).

<sup>2</sup> Tenn. Code Ann. § 67-6-201.

<sup>3</sup> Tenn. Code Ann. § 67-6-203.

<sup>4</sup> Tenn. Code Ann. § 67-4-2004(19). "General partnership" means a partnership in which all partners, as defined by state law, are fully liable for the debts of, or the claims against, the partnership. Partners may be "fully liable" even though one (1) or more persons or individuals dealing with the partnership have by contract agreed to limit their claims against one (1) or more partners or against the partnership as a whole.

<sup>5</sup> "Obligated member entity" means a limited liability company, limited partnership or limited liability partnership, all of whose members or partners are fully liable for the debts, obligations, and liabilities of the entity, as provided in § 67-4-2008(b)-(d), and that have filed appropriate documentation to that effect with the secretary of state.

<sup>6</sup> Tenn. Code Ann. § 67-4-2008(a)(11).

<sup>7</sup> Tenn. Code Ann. § 67-6-102(95)(A).

<sup>8</sup> Tenn. Code Ann. § 67-6-212.

<sup>9</sup> Tenn. Code Ann. § 67-6-207.

<sup>10</sup> Tenn. Code Ann. § 67-6-207(a)(1).

<sup>11</sup> Tenn. Code Ann. § 67-6-207(a)(2).

<sup>12</sup> Tenn. Code Ann. § 67-6-207(a)(3).

<sup>13</sup> Tenn. Code Ann. § 67-6-207(a)(4).

<sup>14</sup> Tenn. Code Ann. § 67-6-207(a)(5).

<sup>15</sup> Tenn. Code Ann. § 67-6-207(a)(6).

<sup>16</sup> Tenn. Code Ann. § 67-6-207(a)(7).

<sup>17</sup> Tenn. Code Ann. § 67-6-207(a)(8).

<sup>18</sup> Tenn. Code Ann. § 67-6-207(a)(9)(A).

<sup>19</sup> Tenn. Code Ann. § 67-6-207(a)(9)(B).

<sup>20</sup> Tenn. Code Ann. § 67-6-207(a)(10).

<sup>21</sup> Tenn. Code Ann. § 67-6-207(a)(11).

<sup>22</sup> Tenn. Code Ann. § 67-6-207(a)(12)(A).

<sup>23</sup> Tenn. Code Ann. § 67-6-207(a)(12)(B).

<sup>24</sup> Tenn. Code Ann. § 67-6-207(a)(13).

<sup>25</sup> Tenn. Code Ann. § 67-6-207(a)(14).

<sup>26</sup> Tenn. Code Ann. § 67-6-207(a)(15).

<sup>27</sup> Tenn. Code Ann. § 67-6-207(a)(16).

<sup>28</sup> Tenn. Code Ann. § 67-6-207(a)(17).

<sup>29</sup> Tenn. Code Ann. § 67-6-207(a)(18).

<sup>30</sup> Tenn. Code Ann. § 67-6-207(a)(19).

<sup>31</sup> Persons who qualify for exemption based on the provisions of the Agricultural Forest and Open Space Land Act of 1976 may not purchase a Class I vehicle exempt from sales tax as the use would not qualify as directly involved in producing agricultural products.

<sup>32</sup> Tenn. Code Ann. § 67-6-702(d).

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<sup>33</sup> Important Notice #14-05.

<sup>34</sup> Tenn. Code Ann. § 67-6-207(a)(1).

<sup>35</sup> Important Notice #17-04.

<sup>36</sup> *Id.*

<sup>37</sup> Tenn. Code Ann. § 67-6-207(a)(2).

<sup>38</sup> Tenn. Code Ann. § 67-6-207(a)(5); Important Notice 19-09.

<sup>39</sup> Tenn. Code Ann. § 67-6-207.

<sup>40</sup> Tenn. Code Ann. § 67-6-207(a)(1).

<sup>41</sup> Important Notice #08-05.

<sup>42</sup> Tenn. Code Ann. § 67-6-207(a)(10).

<sup>43</sup> Important Notice #19-10.

<sup>44</sup> Tenn. Code Ann. § 67-6-207.

<sup>45</sup> Tenn. Code Ann. § 67-6-301.

<sup>46</sup> Tenn. Code Ann. § 67-6-301(a).

<sup>47</sup> Tenn. Code Ann. § 43-39-101.

<sup>48</sup> Important Notice #17-21; Tenn. Code Ann. §§ 67-6-102 and 67-6-228.

<sup>49</sup> Tenn. Code Ann. § 67-6-301(d).

<sup>50</sup> Tenn. Code Ann. § 67-4-712(c)(1).

<sup>51</sup> Tenn. Code Ann. § 67-4-712(c)(2).

<sup>52</sup> Tenn. Code Ann. § 67-4-708(3)(C)(xvi).

<sup>53</sup> Tenn. Code Ann. § 67-4-708(4).

<sup>54</sup> Tenn. Code Ann. § 67-4-708(4)(B).

<sup>55</sup> Tenn. Code Ann. § 67-4-708(3)(C)(xvi).

<sup>56</sup> TENN. COMP. R. & REGS. 1320-04-05-.16(d).

<sup>57</sup> Tenn. Code Ann. §§ 67-4-708(4) and 67-4-712(c)(1).

<sup>58</sup> TENN. COMP. R. & REGS. 1320-04-05-.16(1)(b).

<sup>59</sup> For a complete list of the types of entities that are subject to franchise and excise taxes, see Tenn. Code Ann. § 67-4-2004(38).

<sup>60</sup> “Doing business in Tennessee” means any activity purposefully engaged in within the state by a person with the object of gain, benefit, or advantage. See Tenn. Code Ann. § 67-4-2004(14).

<sup>61</sup> “Substantial nexus in this state” means any direct or indirect connection of the taxpayer to this state that will subject the taxpayer to franchise and excise tax; such connection includes taxpayers who are organized or commercially domiciled in this state, taxpayers who own or use their capital in this state, or taxpayers who have systematic and continuous business activity in this state that produces gross receipts attributable to customers in this state. For a complete definition of “substantial nexus,” see Tenn. Code Ann. § 67-4-2004(49).

<sup>62</sup> Note that only one of the sub-J schedules (i.e., Schedule J1, J2, J3, or J4) will be completed by the taxpayer; the correct sub-J schedule to be completed by the taxpayer depends on the taxpayer’s entity classification for federal income tax purposes.

<sup>63</sup> A partner in a general partnership may be subject to the tax if it is a type of entity that provides limited liability protection to its owners. For more information, please see Chapter 2 of the Franchise and Excise Tax Manual. It can be accessed [here](#).



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<sup>64</sup> Tenn. Code Ann. § 67-4-2004(34). “Not-for-profit” means any person described in § 401, § 408, § 408A, § 409, § 501, § 526, § 527, § 528, § 529 or § 530 of the Internal Revenue Code, codified in 26 U.S.C. § 401, § 408, § 408A, § 409, § 501, § 526, § 527, § 528, § 529 or § 530.

<sup>65</sup> Tenn. Code Ann. §§ 43-16-103(b) and 43-16-148.

<sup>66</sup> Tenn. Code Ann. § 67-4-2008(a)(9). For more information regarding this exemption, please see Chapter 2 of the Franchise and Excise Tax Manual. It can be accessed [here](#).

<sup>67</sup> Tenn. Code Ann. § 67-4-2008(a)(6). *See also* [Important Notice #04-28](#).

<sup>68</sup> Tenn. Code Ann. § 67-4-2008(a)(11). *See also* [Important Notice #04-28](#).

<sup>69</sup> Tenn. Code Ann. § 67-4-2008(a)(6)(B).

<sup>70</sup> Tenn. Code Ann. § 67-4-2008(a)(6)(A).

<sup>71</sup> Tenn. Code Ann. § 67-4-2008(a)(6)(A)(ii).

<sup>72</sup> “Personal use” has the same meaning as defined under Internal Revenue Code § 280A(d)(2), codified in 26 U.S.C. § 280A(d)(2).

<sup>73</sup> Tenn. Code Ann. § 67-4-2008(a)(6)(A)(i).

<sup>74</sup> “Farm property” and “residential property” have the same meaning as defined for property tax purposes under Tenn. Code Ann. § 67-5-501(3) and (11), except that “residential property” includes any property leased or rented for residential purposes that includes not more than four residential units and “farm property” does not include acreage used for recreational purposes by clubs, including golf course playing hole improvements.

<sup>75</sup> Tenn. Code Ann. §§ 1-3-105 and 43-1-113.

<sup>76</sup> Tenn. Code Ann. § 55-1-119.